

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: _____ DATE FILED: 5/30/2024
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CARLOS R. ROSA,	:	
	:	
Plaintiff,	:	
	:	
-against-	:	1:24-cv-119-GHW
	:	
	:	<u>ORDER</u>
PARK AVENUE SOUTH MANAGEMENT,	:	
LLC, <i>et al.</i> ,	:	
	:	
Defendants.	:	
	:	
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GREGORY H. WOODS, United States District Judge:

On May 20, 2024, the Court issued an order to show cause why the claims against Park Avenue South Management, LLC, Tristar Management Associates, LLC, John Doe, and Edward Doe should not be dismissed for failure to serve process within the time allowed by Federal Rule of Civil Procedure 4(m). Dkt. No. 20. Plaintiff responded on May 24, 2024. Dkt. No. 21.

While Rule 4(m) provides that “if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period,” Fed. R. Civ. P. 4(m), “[g]ood cause is generally found only in exceptional circumstances where the plaintiff’s failure to serve process in a timely manner was the result of circumstances beyond its control.” *Vaber v. Town of Orangetown*, N.Y., 916 F. Supp. 2d 404, 419 (S.D.N.Y. 2013) (citation omitted). Where Plaintiff does not give any reason why his failure to serve should be excused for good cause, dismissal is appropriate. *See, e.g., Astarita v. Urgo Butts & Co.*, 96-cv-6991 (PKL), 1997 WL 317028, at *4 (S.D.N.Y. June 10, 1997) (dismissing complaint where “Plaintiff ha[d] not argued or shown that her failure to serve should be overlooked for ‘good cause’ or should be deemed to result from excusable neglect.”); *Nat’l Union Fire Ins. Co. of Pittsburgh, Pa. v. Sun*, 93-cv-7170 (LAP), 1994 WL 463009, at *3 (S.D.N.Y. Aug. 25, 1994) (dismissing complaint where plaintiff “ma[de] no attempt to establish ‘good cause’ or

‘excusable neglect’ for its failure to serve . . .”).


Here, Plaintiff provided good cause for his failure to timely serve Park Avenue South Management, LLC, Tristar Management Associates, LLC, and John Doe. Plaintiff represented that he was engaged in settlement discussion with those defendants, who recently agreed to waive service. Plaintiff stated that “a waiver of service form is in process of being prepared for filing.” Dkt. No. 21 at 2. On May 29, 2024, Plaintiff filed an executed waiver of service for Tristar Management Associates, LLC. Dkt. No. 22. With the understanding that Park Avenue South Management, LLC and John Doe have also waived service, the Court will take no further action on the order to show cause at this time with respect those defendants. Plaintiff is directed to file the waivers for those defendants no later than June 3, 2024. If Plaintiff fails to file the waivers by this date, the Court expects to renew the order to show cause.

Plaintiff acknowledged that he had not served Edward Doe and provided no reason, let alone good cause, for his failure to timely Edward Doe under Fed. R. Civ. P. 4(m). Accordingly, Plaintiff’s claims against Edward Doe are dismissed without prejudice.

Plaintiff is directed to serve a copy of this order on all Defendants and to retain proof of service.

SO ORDERED.

Dated: May 30, 2024



GREGORY H. WOODS
United States District Judge